

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
ROGER R. CRANE, JR.,	:	
Plaintiff,	:	07 CV 7063 (BSJ)
	:	
-against-	:	
	:	
POETIC PRODUCTS LIMITED,	:	
	:	
Defendant.	:	
	:	
-----X		

AFFIDAVIT OF ADAM PAUL BRICKELL

EXHIBIT APB 2

Plaintiff
A. P. Brickell
Affidavit: First
Exhibits: "APB 1" - "APB 3"
Date: 20 August 2007

Claim No: 07 CIV 7063

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BETWEEN:

ROGER R. CRANE, JR

Claimant

- and -

POETIC PRODUCTS LIMITED

Defendant

EXHIBIT "APB 2" REFERRED
TO IN THE AFFIDAVIT OF
ADAM PAUL BRICKELL

SWORN by Adam Paul Brickell)

This 20th day of August 2007)

Before me: JESSICA.....STRETCH)

A Solicitor/~~Commissioner for Oaths~~)

at)

Osborne Clarke
One London Wall
EC2Y 5EB

Rule 6.28 Translation of claim form

Rule 6.29 Undertaking to be responsible for expenses of the Foreign and Commonwealth Office

Rule 6.30 Service of documents other than the claim form

Rule 6.31 Proof of service

IV Service of foreign process

Rule 6.32 Scope and definitions

Rule 6.33 Request for service

Rule 6.34 Method of service

Rule 6.35 After service

I GENERAL RULES ABOUT SERVICE

6.1 Part 6 rules about service apply generally

The rules in this Part apply to the service of documents, except where –

- (a) any other enactment, a rule in another Part, or a practice direction makes a different provision; or
- (b) the court orders otherwise.

(For service in possession claims, see Part 55).

6.2 Methods of service – general

(1) A document may be served by any of the following methods –

- (a) personal service, in accordance with rule 6.4;
- (b) first class post (or an alternative service which provides for delivery on the next working day);
- (c) leaving the document at a place specified in rule 6.5;
- (d) through a document exchange in accordance with the relevant practice direction; or
- (e) by fax or other means of electronic communication in accordance with the relevant practice direction.

(Rule 6.8 provides for the court to permit service by an alternative method)

(2) A company may be served by any method permitted under this Part as an alternative to the methods of service set out in –

- (a) section 725 of the Companies Act 1985¹ (service by leaving a document at or posting it to an authorised place);
- (b) section 695 of that Act (service on overseas companies); and
- (c) section 694A of that Act (service of documents on companies incorporated outside the UK and Gibraltar and having a branch in Great Britain).

6.3 Who is to serve

(1) The court will serve a document which it has issued or prepared except where –

- (a) a rule provides that a party must serve the document in question;
- (b) the party on whose behalf the document is to be served notifies the court that he wishes to serve it himself;
- (c) a practice direction provides otherwise;

¹ 1985 c.6.

- (d) the court orders otherwise; or
 - (e) the court has failed to serve and has sent a notice of non-service to the party on whose behalf the document is to be served in accordance with rule 6.11.
- (2) Where the court is to serve a document, it is for the court to decide which of the methods of service specified in rule 6.2 is to be used.
- (3) Where a party prepares a document which is to be served by the court, that party must file a copy for the court, and for each party to be served.

6.4 Personal service

- (1) A document to be served may be served personally, except as provided in paragraphs (2) and (2A).
- (2) Where a solicitor –
- (a) is authorised to accept service on behalf of a party; and
 - (b) has notified the party serving the document in writing that he is so authorised, a document must be served on the solicitor, unless personal service is required by an enactment, rule, practice direction or court order.
- (2A) In civil proceedings by or against the Crown, as defined in rule 66.1(2), documents required to be served on the Crown may not be served personally.
- (3) A document is served personally on an individual by leaving it with that individual.
- (4) A document is served personally on a company or other corporation by leaving it with a person holding a senior position within the company or corporation.
- (The service practice direction sets out the meaning of ‘senior position’)
- (5) A document is served personally on a partnership where partners are being sued in the name of their firm by leaving it with –
- (a) a partner; or
 - (b) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

6.5 Address for service

- (1) Except as provided by Section III of this Part (service out of the jurisdiction) a document must be served within the jurisdiction.
- (‘Jurisdiction’ is defined in rule 2.3)
- (2) A party must give an address for service within the jurisdiction. Such address must include a full postcode, unless the court orders otherwise.
- (Paragraph 2.4 of the Practice Direction to Part 16 contains provision about the content of an address for service).
- (3) Where a party –
- (a) does not give the business address of his solicitor as his address for service; and
 - (b) resides or carries on business within the jurisdiction, he must give his residence or place of business as his address for service.
- (4) Any document to be served –

- (a) by first class post (or an alternative service which provides for delivery on the next working day);
- (b) by leaving it at the place of service;
- (c) through a document exchange; or
- (d) by fax or by other means of electronic communication,
must be sent or transmitted to, or left at, the address for service given by the party to be served.

(5) Where –

- (a) a solicitor is acting for the party to be served; and
- (b) the document to be served is not the claim form;
the party's address for service is the business address of his solicitor.

(Rule 6.13 specifies when the business address of a defendant's solicitor may be the defendant's address for service in relation to the claim form)

(6) Where –

- (a) no solicitor is acting for the party to be served; and
- (b) the party has not given an address for service,
the document must be sent or transmitted to, or left at, the place shown in the following table.

(Rule 6.2(2) sets out the statutory methods of service on a company)

Nature of party to be served	Place of service
Individual	<ul style="list-style-type: none"> ● Usual or last known residence.
Proprietor of a business	<ul style="list-style-type: none"> ● Usual or last known residence; or ● Place of business or last known place of business.
Individual who is suing or being sued in the name of a firm	<ul style="list-style-type: none"> ● Usual or last known residence; or ● Principal or last known place of business of the firm.
Corporation incorporated in England and Wales other than a company	<ul style="list-style-type: none"> ● Principal office of the corporation; or ● Any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.
Company registered in England and Wales	<ul style="list-style-type: none"> ● Principal office of the company; or ● Any place of business of the company within the jurisdiction which has a real connection with the claim.
Any other company or corporation	<ul style="list-style-type: none"> ● Any place within the jurisdiction where the corporation carries on its activities; or ● Any place of business of the company within the jurisdiction.

- (7) This rule does not apply where an order made by the court under rule 6.8 (service by an alternative method) specifies where the document in question may be served.

(Rule 42.1 provides that if the business address of his solicitor is given that solicitor will be treated as acting for that party).

(8) In civil proceedings by or against the Crown, as defined in rule 66.1(2) –

- (a) service on the Attorney General must be effected on the Treasury Solicitor;
- (b) service on a government department must be effected on the solicitor acting for that department as required by section 18 of the Crown Proceedings Act 1947.

(The practice direction to Part 66 gives the list published under section 17 of that Act of the solicitors acting for the different government departments on whom service is to be effected, and of their addresses).

6.6 Service of documents on children and patients

- (1) The following table shows the person on whom a document must be served if it is a document which would otherwise be served on a child or a patient –

Type of document	Nature of party	Person to be served
Claim form	Child who is not also a patient	<ul style="list-style-type: none"> • One of the child's parents or guardians; or • If there is no parent or guardian, the person with whom the child resides or in whose care the child is.
Claim form	Patient	<ul style="list-style-type: none"> • The person authorised under Part VII of the Mental Health Act 1983¹ to conduct the proceedings in the name of the patient or on his behalf; or • If there is no person so authorised, the person with whom the patient resides or in whose care the patient is.
Application for an order appointing a litigation friend, where a child or patient has no litigation friend	Child or patient	See rule 21.8.
Any other document	Child or patient	The litigation friend who is conducting proceedings on behalf of the child or patient.

- (2) The court may make an order permitting a document to be served on the child or patient, or on some person other than the person specified in the table in this rule.
- (3) An application for an order under paragraph (2) may be made without notice.
- (4) The court may order that, although a document has been served on someone other than the person specified in the table, the document is to be treated as if it had been properly served.
- (5) This rule does not apply where the court has made an order under rule 21.2(3) allowing a child to conduct proceedings without a litigation friend.

(Part 21 contains rules about the appointment of a litigation friend)

6.7 Deemed service

- (1) A document which is served in accordance with these rules or any relevant practice direction shall be deemed to be served on the day shown in the following table –

¹ 1983 c.20.

Method of service	Deemed day of service
First class post (or an alternative service which provides for delivery on the next working day)	The second day after it was posted.
Document exchange	The second day after it was left at the document exchange.
Delivering the document to or leaving it at a permitted address	The day after it was delivered to or left at the permitted address.
Fax	<ul style="list-style-type: none"> • If it is transmitted on a business day before 4 p.m., on that day; or • In any other case, on the business day after the day on which it is transmitted.
Other electronic method	The second day after the day on which it is transmitted.

- (2) If a document is served personally –
 - (a) After 5 p.m., on a business day; or
 - (b) At any time on a Saturday, Sunday or a Bank Holiday, it will be treated as being served on the next business day.
- (3) In this rule –
 - ‘business day’ means any day except Saturday, Sunday or a bank holiday; and
 - ‘bank holiday’ includes Christmas Day and Good Friday.

6.8 Service by an alternative method

- (1) Where it appears to the court that there is a good reason to authorise service by a method not permitted by these Rules, the court may make an order permitting service by an alternative method.
- (2) An application for an order permitting service by an alternative method –
 - (a) must be supported by evidence; and
 - (b) may be made without notice.
- (3) An order permitting service by an alternative method must specify –
 - (a) the method of service; and
 - (b) the date when the document will be deemed to be served.

6.9 Power of court to dispense with service

- (1) The court may dispense with service of a document.
- (2) An application for an order to dispense with service may be made without notice.

6.10 Certificate of service

Where a rule, practice direction or court order requires a certificate of service, the certificate must state the details set out in the following table

Plaintiff
A. P. Brickell
Affidavit: First
Exhibits: "APB 1" - "APB 3"
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ADAM PAUL BRICKELL**

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